89- 1594

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1989

Basil R. Legg, Jr.
Petitioner

vs

North Carolina Board of
Law Examiners
Respondent

PETITION FOR A WRIT OF CERTIORARI

Basil R. Legg, Jr
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QUESTIONS FOR REVIEW

QUESTION I.

Did Respondents deny Petitioner Due Process of Law by the use of ex parte evidence throughout the consideration of Petitioner's application to the Bar including the use of extensive ex parte evidence at both of the hearings held regarding Petitioner' s application?

QUESTION II.

Did Respondents deny Petitioner Due Process of Law by questioning him at his hearings extensively on matters of which he received no notice and then relying on those matters in reaching their decision to deny him the right to practice law?

QUESTION III

Did Respondents deny Petitioner Due Process of Law by applying a standard of conduct for admission to the Bar that is unconstitutionally vague and subjective and which permits arbitrary and capricious discrimination against applicants to the North Carolina Bar?

QUESTION IV

Did Respondents deny Petitioner Due Process of Law by wrongfully finding as a basis for denial of his application to the Bar that he had "converted" funds due a private investigator while, at the same time, finding as a basis for the denial that he had failed to list these funds as a debt on his application?

QUESTION V

Did Respondents deny Petitioner Due Process of Law by finding that his practice of law was characterized by a pattern of carelessness and inattention to detail when Respondent presented no evidence to support that finding and where there are no findings against Petitioner for any ethical, legal or moral deficiency by his state of practice and where Petitioner had no notice that the quality of his practice was a proper subject of an investigation of his good moral character?

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JURISDICTIONAL STATEMENT

This matter comes before this Court on the Petition of Basil R. Legg, Jr. pursuant to the provisions of the Rules of this Court for a reversal of the decision of the Supreme Court of North Carolina (5-2) which affirmed the decision of Respondent to deny Petitioner the right to sit for the February 1987 Bar Examination. This denial was done in violation of Petitioner's right to Due Process of Law and the equal protection of the law and this Court's prior decisions interpreting those rights as they apply to Bar applicants.

DATE OF LOWER COURT OPINION

December 7, 1989

STATUTORY AUTHORITY FOR REVIEW

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

U.S.C.A. Constitution Amendment 14

STATEMENT OF THE CASE

This matter comes before this Court upon Petitioner's objection to the decision of the North Carolina Supreme Court dated December 7, 1989 which upheld Respondent's denial of Petitioner's application to sit for the North Carolina Bar Examination of February 1986. The due process issues were raised by Petitioner as exceptions to the findings of Respondent initially and at all appropriate stages thereafter. The inferior courts and the North Carolina Supreme Court held that Petitioner had not been denied his due process rights. Additional due process grounds relied upon by Petitioner arise from the opinion issued in support of the denial of Petitioner's appeal by the North Carolina Supreme Court in the instant case. (In re Legg No. 168A89).

Petitioner originally applied to take the July 1986 Bar Examination in North Carolina. This application was filed ten days after the deadline for filing and was returned to Petitioner. Petitioner subsequently was employed by the Governor of North Carolina effective October 1, 1986. The deadline for applications to take the February 1987 Examination was October 10, 1986. Due to the rush of moving and beginning a new job Petitioner refiled the original application with only changes in address and other obvious changes. Petitioner failed to review and update other sections of the application including the section on debts.

Petitioner complied with all applicable procedures regarding character interviews and screening and was cleared to take the Bar Examination in February 1987. Petitioner sat for the Examination in February 1987 without any notice that any problems existed with his application. While awaiting the results of the Examination, Petitioner received a notice that he was required to appear before a panel to answer questions about his application and his good moral character.

Petitioner, not appreciating the adversarial nature of the proceeding, did not attend this "hearing" with counsel. The matters referred to in the original notice were all matters that Petitioner knew were innocent and not probative in any way of his character. (Note that all of the serious charges in the first notice were eventually dropped)

However, at this hearing Petitioner was subjected to an interrogation that was designed to provoke and attack Petitioner and seemed designed to evoke a negative response from Petitioner. This panel, without any evidence being presented against Petitioner, found Petitioner unfit to practice law. This action effectively doomed Petitioner's application.

Petitioner applied for a "de novo" hearing before the full Board. However, the same members who had already found Petitioner unfit sat as members at this "hearing". At this hearing Petitioner was subjected to a vicious attack from counsel for Respondent, one based entirely on innuendo and matters of which Petitioner had received no notice. Petitioner and his counsel were stunned by these unfair tactics and were never able to proceed in a fair manner to present Petitioner's case as if to an impartial Board.

Respondent issued its first ruling which was clearly not in conformity with the North Carolina Supreme Court's developed standards of proof. Petitioner appealed and the Superior Court remanded the case to Respondents with very specific instructions regarding specific findings needed to sustain the finding against Petitioner. Without accepting additional evidence (which evidence was probative and newly discovered and which would have exonerated Petitioner) Respondents again ruled against Petitioner. The issues raised by the Superior Court judge were once again not answered.

However, in North Carolina, judges are assigned on a rotating basis and for the second hearing a judge was appointed from another district to hear the appeal. After several months of delay, this judge

ruled against Petitioner. This ruling was in spite of Respondents failure to apply the standards of proof ordered by the first judge and as required under the rulings of the North Carolina Supreme Court.

Petitioner appealed this ruling to the North Carolina Supreme Court which held against Petitioner by applying a new and more stringent burden of proof to his application. Petitioner now looks to this Court for a reversal of the North Carolina Supreme Court.

ARGUMENT

QUESTION I

Did Respondents deny Petitioner Due Process of Law by the use of ex parte evidence throughout the consideration of Petitioner's application to the Bar including the use of extensive ex parte evidence at both of the hearings held regarding Petitioner's application?

ARGUMENT

Respondents use of ex parte evidence against Petitioner, a Bar applicant, conflicts with the Due Process provisions of the Fourteenth Amendment to the United States Constitution and this Courts prior decisions. See e.g. Goldsmith v United States Board of Tax Appeals, 270 U.S. 117, 46 S.Ct. 215, Schware v Board of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752, Willner v Committee on Character and Fitness 83 S.Ct. 1175.

The only evidence presented at Petitioner's hearing was Petitioner's own testimony (none of which was found to be false by Respondent and which was consistent and credible throughout) and a few documents that had no subtantive evidentiary value in that they in no way contradicted any of Petitioner's testimony. In order to obtain information to confront Petitioner, Respondent engaged in substantial ex parte communications with numerous persons including Randall Veneri, Bonnie Tichenor and Linda White. These individuals presented the only "evidence" in opposition to Petitioner's application

No one appeared to testify against Petitioner at his hearing in person, by deposition, or otherwise. The record clearly shows that these ex parte communications occurred, that they were substantial and that they were the basis for Respondent's denial of Petitioner's application.

The issue facing this Court is whether or not the use of substantial ex parte evidence to deny an applicant the opportunity to sit for the Bar offends the Constitution of the United States and the previous decisions of this Court by denying an applicant Due Process of Law. This Court has previously held that "procedural due process often retires confrontation and cross-examination of those whose word deprives a person of his livelihood." Willner, infra (citing Green v McElroy 360 U.S. 474, 492,496-497). Justice Black, writing for Justice Douglas states that "We think that the need for confrontation is a necessary conclusion from the requirements of procedural due process in a situation such as (that faced by applicant Willner)". And what was the situation faced by Willner? Willner was denied his license to practice law on the grounds that he did not possess sufficient "good moral character" to be a member of the Bar in New York. The decision to deny him was made by a Committee partially upon damaging ex parte statements of another lawyer. Willner was not provided a hearing at which he could cross-examine his accuser. The Court held that this denial of the right to confrontation did not afford Willner Due Process of Law.

In the instant case, your Petitioner does not deny that he recieved a hearing. However, the situation that existed in Willner also exists here, only in a more sophisticated and dangerous scheme. The only thing more damaging to the concept of due process than no hearing is a pretextual one that is used to provide the facade of due process without the substance. This record contains numerous undisputed

references to information supplied to Respondents by Mr. Veneri. (See e.g. Tr. pg. 53, 54). Similarly, there are several instances in the record of questions asked that could only have come from information supplied by Bonnie Tichenor. (See Tr. pgs. 45, 55-58, 83-90). The same is true of Linda White. (See Tr. pg. 145).

In the concurring opinion in Willner Justice Goldberg, writing for Justices Brennan and Stewert, held "if the denial (of the license) depends upon information supplied by a particular person whose reliability or veracity is brought into question by the applicant, confrontation and the right of cross-examination should be afforded". Willner at 1182. Petitioner vehemently challenged the reliability and veracity of these "witnesses" at his "hearing", especially that of Mr. Veneri. In spite of numerous objections to this unfair procedure and his repeated objection to trial by innuendo, Petitioner was never provided access to any of the the information used by Respondent against him and was never given the opportunity to confront and cross-examine any of his accusers. This procedure not only denied Petitioner a fair hearing it also limited the record for review so that the appellate court' s decision was based on an incomplete and incorrect record.

Respondents have never been required by the state courts to explain their access to or the extent of their use of this specific knowledge. Respondent's possession of this knowledge without the opportunity for Petitioner to confront and cross-examine those that provided it is a clear and blatant violation of Petitioner's right to due process. All of these ex parte complainants were residents of West Virginia and were outside the reach of any subpoena power available to Petitioner. However, if Respondents desired to use this type of out of state complainant they were free to go to West Virginia to take testimony of these witnesses by deposition after notice and in the presence of Petitioner and his counsel. There is no real claim of unreasonable burden or other justification for this denial of the right to confrontation.

The only explanation is that this Respondent wishes to control the Bar in North Carolina against out of state lawyers, especially those who may belong to the "wrong" political party (or who may be the wrong color) by denying due process to certain select applicants.

Willner actually received more due process from New York than did Petitioner from North Carolina. The New York Committee at least showed him the evidence used against him. Respondant's have consistantly denied Petitioner the right to view the evidence given against him by the above named individuals. Therefore, there does exist a substantial federal question under Rule 10 of the Rules of this Court in that a state court has improperly ruled in contavention of this Court's prior ruling interpreting the United States Constitution. There also exists a clear right to the relief sought which further entitles this Petitioner to present his case to this Court and to have this Court reverse the Supreme Court of North Carolina.

QUESTION II

Did Respondents deny Petitioner Due Process of Law by questioning him at his hearings extensively on matters of which he recieved no notice and then relying on those matters in reaching their decision to deny him the right to practice his profession?

ARGUMENT

There is no doubt from the transcript and the record below that Petitioner was subjected to interrogation about several matters of which he had no notice and opportunity to prepare. The most blatant example concerns allegation regarding Petitioner's business relation-

ship with Bonnie Tichenor, a private stenographer used on occasion by Petitioner during his practice of law. A review of the various notices of hearings sent to Petitioner from Respondent will show **absolutely no reference to Bonnie Tichenor at all. Nowhere in the record is there even the mention of the name Bonnie Tichenor** prior to Petitioners examination on this matter by counsel for Respondent. There was, of course, no specific notice of any alleged wrong doing in regard to Mrs. Tichenor. And yet not only did Respondent ambush Petitioner by questioning him extensively about this matter, they used it as a basis for their finding against Petitioner and the Supreme Court of North Carolina referred to it as a basis for its affirmance of Respondent's decision.

At no point in this entire case has there been any evidence at all about Petitioner's handling of his business relationship with Bonnie Tichenor except Petitioner's own testimony that he denied any wrong-doing and that he vehemently objected to trial by innuendo. (See Tr. pg. 92-94). In addition, the use of this blatant trial by ambush very likely caused Petitioner to not make a positive overall impression with the entire Board because of his understandable outrage over this fundamentally unfair tactic. Petitioner's entire application process was tainted by Respondents unconstitutional activity and should be overturned by this Court.

The second, and perhaps most damaging, example of an impermissable lack of notice was the failure of the Board to give Petitioner notice that it intended to question him about an alleged "conversion" of funds due to a private investigator, Tom Moses. Petitioner admits that the Board did provide notice that he would be questioned regarding Petitioner's failure to list a debt due Mr. Moses on Petitioner's application (in the same manner as Petitioner was questioned about other omissions regarding other debts). And when he arrived at the hearing Petitioner was prepared to fully explain his error in

neglecting to update the section of his application regarding debts.

Respondent's notice fails to meet the standards of due process because notice of inquiry about the omission of a debt from an application can in no way put anyone on notice that he is being charged with a "conversion" of the same funds. The legal concepts of a contractual debt and a "conversion" are mutually exclusive. If one owes someone a debt due to a contract then one cannot, as a matter of law, convert that person's funds due under the contract. To hold otherwise is to pervert the law of contract and property beyond the bounds of due process. Under the North Carolina standard applied against Petitioner any delay in the payment of a contracted debt would make the obligor liable for conversion and would constitute an immoral or unethical act. This holding is clearly arbitrary and capricious and does not hold with the requirements of due process. Therefore, a finding that notice of a question about the omission of a debt from a Bar application and nothing more gives "fair and full" notice of an allegation of conversion is plain error and must be reversed by this Court. This holding is analogous to a criminal defendant being indicted for one offense and being tried and convicted of another that contains mutually exclusive legal or factual elements.

Petitioner had no reason to be on notice that he needed Mr. Moses to be present to give testimony at his hearing. Mr. Moses had no knowledge on the issue of why Petitioner's debt to him was not included on Petitioner's application. However, Mr. Moses did have information regarding Petitioner's handling of this business transaction (and many others) and why there was no conversion in this case. For example, Moses could have testified as to his previous authorization for Petitioner to deposit reimbursement funds as done in this case (thus negating an essential element of conversion), his receipt of a check from Petitioner for several other cases which was to have

included the two overlooked, his knowledge of the fact that Petitioner never excluded the funds from him (thus negating another element of conversion), his total support of Petitioner for admission to the Bar and the fact that he had nothing but positive comments in regards to Petitioner's application.

In addition to Mr. Moses, had Petitioner had notice of a charge of conversion he would have called his former secretary to explain her error in the preparation of the check to Moses, her testimony that she told Petitioner that Moses had been fully paid, and her placing the files in question in the office "paid" file. All of this testimony is obvious to defend against a charge of conversion but is immaterial to an allegation of omission from an application. (In fact, had Petitioner attempted to present the testimony above on the issue of omission, then it would have been properly excluded on the grounds of immateriality). Other material witnesses on the issue of conversion could also have been produced had the notice been proper.

These actions by Respondent are agregious examples of failure to provide adequate notice in violation of the Fourteenth Amendment to the United States Constitution and this Court's holding in Willner. Therefore, there exists a substantial federal question under Rule 10 of the Rules of this Court and clear grounds for reversal of the North Carolina Supreme Court.

QUESTION III

Did Respondents deny Petitioner Due Process of Law by applying a standard of proper conduct for admission to the Bar that is unconstitutionally vague and subjective and which permits arbitrary and capricious discrimination against applicants to the North Carolina Bar?

ARGUMENT

The consistent holdings of this Court require that the standard for denying a citizen a protected right must be specific and objective. See e.g Matthews v Eldridge 424 U.S. 319 (1976), Arnett v Kennedy 416 U.S. 134 (1974), Goldberg v Kelly 397 U.S. 254 (1970) . In this case the North Carolina Supreme Court has applied a vague and totally subjective standard to Petitioner, one that permits Respondents to engage in invidious discrimination against any Bar applicant.

Prior to Petitioner's case, the standard for review of an action by Respondents was fairly clear and was a proper, objective, mainstream analysis. The applicant was required to make a prima facie showing of good moral character. After making the requisite showing the Board or anyone else wishing to challenge an applicant could come forward and attempt to rebut, by a preponderance of the evidence, the applicant's prima facie showing. Specific acts of misconduct had to be proven by the greater weight of the evidence. In re Elkins, 308 N.C. 317, 321, 302 S.E. 2d 215, 217, cert. denied. 464 U.S. 995, 78 L.Ed.2d 685 (1983) In this case Petitioner admittedly made the requisite showing of a prima facie case and Respondent attempted to rebut that showing. However, Respondent presented no witnesses or any other evidence to rebut Petitioner's testimony. What Respondent has done is to arbtrarily reject Petitioner's uncontroverted testimony (without, by the way, finding any of it to be false) and to substitute other inferences. These inferences are obviously the result of the ex parte communications referred to above and the intent on the part of Respondents to deny Petitioner admission to the Bar for improper and unconstitutional reasons.

In addition, the North Carolina Supreme Court failed to follow their own standard of review in the same opinion in which that standard was resoundedly reaffirmed. The burden shifting analysis of In re Willis, 288 N.C. I, 215 S.E.2d 771, is cited with clear approval in the opinion in the instant case at page 20. Petitioner clearly met his initial prima facie burden and the burden then properly shifted to alleged acts of misconduct which the Board must prove by a preponderance of the evidence. Elkins, infra., Willis, infra. However, on page 20 of the opinion the North Carolina Supreme Court held that "(W)here there is a purposeful pattern of omitted material information, the Board may conclude that the applicant has failed in **his burden** to exhibit candor in his application. (emphasis added). However, Petitioner had already made his prima facie case through the character affadavits submitted with his application. After the burden has shifted, lack of candor (as a wrongful, disqualifying act) must be proven by the Board, not by the applicant and the Board must do so by a preponderance of the evidence.

Respondent admitted in oral argument below that they had found no evidence of any wrongdoing hidden by Petitioner's omissions. (This admission was made several months after the omissions were furnished to Respondents by amendments to the application thereby giving Respondents ample time to investigate these matters) In fact, Petitioner had explained that when he originally applied for the Bar, his section listing his debts were correct. Unfortunately, this application was late and was returned to Petitioner. Petitioner then refiled the original application for the next Examination without thinking to review his finances to update the section on debts.

This is a reasonable explanation which was arbitrarily rejected by Respondent without any evidence upon which to base the rejection.

And this finding was made when Respondent was carrying the burden of proof. Therefore, as of this decision, any omission from an application, no matter how innocent, and without any supporting evidence of any wrongdoing, will permit Respondent to deny an applicant to the Bar. This power is beyond the normal deference given to the states by this Court. In re Griffiths, 413 U.S. 717, 725, 37 L.Ed.2d 910, 917 (1973). And it is beyond the scope of permissible activity under the United States Constitution as applied by this Court.

What the North Carolina Supreme Court did in the instant case was arbitrary and capricious. After the prima facie case has been made, the Board may not conclude anything against an applicant unless they prove the allegations by a preponderance of the evidence. To permit a Bar review committee to arbitrarily reject the only witness before it when his testimony is consistent and credible opens an enormous gateway to unlawful discrimination against this Petitioner and future applicants. Petitioner claims that as a ranking member of a Republican administration in a heavily Democratic state (and Bar) the actions of Respondents were motivated by political considerations. The new standard of proof applied by the North Carolina Supreme Court, if upheld by this Court, would permit this type of discrimination based on other factors deemed unwanted, including the applicants race, sex or religion.

QUESTION IV

Did Respondents deny Petitioner Due Process of Law by wrongfully finding that he had "converted" funds due a private investigator while, at the same time, finding that he had wrongfully failed to list these funds as a debt on his application?

ARGUMENT

This is the portion of the North Carolina Supreme Court ruling that is most puzzling and disappointing to Petitioner. Petitioner admitted to Respondent that he failed to update the section of his application relating to debts. This included the debt to Tom Moses. However, Respondent found that Petitioner had converted funds of Mr. Moses to his own use. Curiously, Respondent never found that this conversion was "wrongful or illegal" or even "intentional". The finding was that Petitioner willfully converted the funds by the act of depositing them to his account. As a matter of law this finding is arbitrary and capricious and plain error. Conversion in North Carolina is defined as "an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or to the exclusion of an owner's rights." Wall v Colvard, Inc., 268 N.C. 43, 49. 149 S.E.2d 559, 564 (1966).

The Supreme Court of North Carolina found that Petitioner had intentionally deposited checks from the West Virginia Legal Services Corporation which contained monies owed to Mr. Moses into his personal account (the office account having been closed at the closing of the practice) and spent those funds from his personal account. However, the evidence clearly showed, and the North Carolina Supreme Court so found, that Petitioner had a continuing legal obligation to repay the funds to Moses that was at no time ever extinguished. Respondents never found that Mr. Moses was excluded from the funds or that Petitioner had the intent to convert the funds. However, Respondent went on to find that, in spite of this contractual obligation to repay, and the fact that at least two elements of conversion were not present, Petitioner was guilty of a conversion of funds.

This finding is so arbitrary and capricious that this Court must

reject its usual deference to a state's highest Court and find that Petitioner's due process rights have been violated. If a state Supreme Court holds that the earth is flat then this Court has an obligation to reverse and instruct them that the earth is round. Petitioner feels that Respondents have rejected him without any evidence and with a finding tantamount to holding that the world is flat. (See Opinion pg. 16)

The Court compounded its error by stating on page 16 of the opinion that "Legg's conduct shows an unauthorized assumption of the right of ownership over monies to which another was entitled sufficient to support the Board's conclusion **in the context of a Board hearing.**" (emphasis added). The act of conversion as a morally wrong act is not dependant upon the composition of the panel that reviews it. For the North Carolina Supreme Court to have denied Petitioner his livelihood on the basis of this faulty analysis (in which they fail to properly apply a rule that is set out in the same opinion as it is wrongly applied) is a blatant and dangerous violation of Petitioner's right to due process of law. Under no circumstance and under no definition of conversion in any of the fifty states (including North Carolina), is Petitioner guilty of conversion or any other wrongful or immoral act regarding the funds of Tom Moses. Respondents finding must be overturned by this Court as being in violation of due process of law.

The error in analysis is made even more clear by a review of the language on page 17 where the court held "that Legg had a duty to ensure that debts associated with the reimbursement claims were paid in full before putting the reimbursement monies to his own use. This position is a reasonable one." There is no ethical deficiency in depositing reimbursement checks into an attorney's non-trust accounts. There was a clear past history of this type of activity between

Petitioner and Mr. Moses which established authorization from Moses for the deposit of the funds. The State of West Virginia and its Bar have no legal, moral or ethical prohibition against this practice. There was never any evidence that Petitioner had any intention of converting the funds. And respondent never found any intention to convert or to commit any other wrongful act ever existed on the part of Petitioner.

The only evidence presented was Petitioner's testimony that he or his staff overlooked the last two bills which were for two cases that were unusual procedurally (one was a second billing of an old file and the other was a client who failed to appear and was at that time a fugitive and as such required a seperate court appearance in order for Petitioner to be relieved as counsel of record). These two (out of over seventy) were rebilled by the investigator (once) and immediately paid off in installments pursuant to an agreement with the investigator. Under no system that provides due process of law can these blatant errors by a state court be left uncorrected. Even with the normal deference to the state court this type of error cannot be allowed. There exists a substantial federal question under Rule 10 of the Rules of this Court and clear grounds for a reversal of the decision of Respondent as affirmed by the Supreme Court of North Carolina.

QUESTION V

Did Respondents deny Petitioner Due Process of Law by finding that his practice of law was characterized by a pattern of carelessness and inattention to detail when Respondent presented no evidence to support that finding and where there are no findings against Petitioner for any ethical, legal or moral deficiency by his state of practice and when Petitioner had no notice that the quality of his practice was a proper subject of an investigation of his good moral character?

ARGUMENT

As grounds for its finding that Petitioner lacked "good moral character" Respondents found that he demonstrated a "pattern of carelessness, neglect and inattention to detail" in his practice of law in West Virginia. This finding is without any evidentiary support and is totally arbitrary and capricious. Furthermore, this standard is not one that reasonably reflects on an applicants good moral character as defined by this Court (and by the Supreme Court of North Carolina) for purposes of determining the moral fitness of an applicant to the practice of law. See In re Rogers 297 N.C. 48, 253 S.E. 2d 912 (1979), Schware,infra. As the dissent in the instant case held "(T)he evidence showed that the applicant represented 298 clients while practicing law in West Virginia. The finding by the Board against him is that he failed to deliver a file to one client. If we add to this his overlooking a bill to a private investigator until this matter was called to his attention, I hardly believe this establishes a pattern of carelessness, neglect, and inattention to detail in his West Virginia law practice." (dissent, page 5).

What is most dangerous in this finding is that a **character review Board** can now make an independent review of the quality of an applicants practice of law that is totally free of any problems with the Bar in the state of practice and arbitrarily find against an applicant based upon its "long distance" review of the practice. This Court should strike down this practice as it clearly fails to afford Petitioner due process of law and the equal protection of the laws. This Court must understand that Petitioner's practice in West Virginia was totally free of any ethical, legal or moral questions. There was no evidence against Petitioner from any source. The West Virginia State Bar had no findings of even a preliminary nature against Petitioner.

The North Carolina Supreme Court has added to the definition of the term "good moral character" in a Bar applicant by holding that applicants must show "the maturity and professional discipline necessary to accept responsibility and perfect the actions required to represent a client properly." (See opinion pg. 21). And further that "Such work habits could prove permanently damaging to any client who might come to rely on the applicant's professional expertise... [t]he record reveals that Legg fails to show the maturity and professional discipline that is a fundamental attribute of the good moral character required to practice law." (Opinion page 22).

Not only is this standard so vague and imprecise that it acts as no standard at all, it does not measure that which this Court has held to be "good moral character". Furthermore, its application against Petitioner is without any factual basis in the record. If this standard is accepted by this Court as comporting with Due Process then Respondents will be free to deny any practicing attorney from any jurisdiction regardless of his/her standing in the state of practice. All current attorney applicants will have to meet a higher standard of character than do new graduates. An applicants proficiency in the law is properly the subject for the Bar application. If a candidate is a member in good standing in the Bar of practice then he is entitled to a presumption of good moral character. Re: Evans 524 F.Supp 1004.

This Court has defined moral character in numerous cases. Schware, infra, In re Summers 325 U.S. 561, 65 S.Ct. 1307 (1945), Willner, infra. This Court has never permitted a state to place this type of burden upon a Bar applicant. This is true because the potential for abuse in this type of analysis is so great and because the standards for new applicants and practicing applicants should be equal. There exists no requirement that a Bar applicant demonstrate proper office

procedures or "attention to detail" for admission to the Bar. Competence is properly the purpose of the Bar Exam. New applicants to the Bar are not subject to this standard of "attention to detail" or "carelessness" in a law practice. This standard is newly applied to Petitioner and violates his right to Due Process of the Law and the equal protection of the laws.

CONCLUSION

Petitioner knows that this great Court has a burdensome caseload and that issues vital to the nation come before you every day. But there are a few cases that clearly and convincingly cry out for your consideration and correction. Petitioner brings before you now such a case.

This Board, if permitted to operate with the unchecked power of the vague, subjective standards applied to Petitioner, with the ability to use unlimited ex parte evidence and with disregard for the requirements of procedural due process will be able to control access to the Bar in a more sophisticated fashion than in the old days of blatant discrimination. Anyone who does not please them will be rejected for the same phantom reasons and with the same type of "evidence" as was Petitioner.

There will be no need for Respondents to go to the trouble of calling witnesses to make their case - that might permit an applicant to cross-examine his accusers and find inconsistancies or errors in their testimony (and also create a proper record for appeal). There will be no need for proper notice so that the applicant might properly prepare for the allegations of which he is, in fact, charged (to enable the applicant to bring the proper witnesses and proper files to the hearing). There will be no need for the charges against an applicant

be proven by evidence rather than by ex parte evidence or arbitrary rejection of consistent, credible testimony (that might require Respondents carry their own burden of proof). There will be no need for the determination of character to be made upon those areas of a person's life that rightly show his character (then a practicing attorney applicant might have the same burden of proof as one right out of law school).

If this great Court believes that someone appearing before a tribunal that can take away his right to earn a living does not have the right to the protections denied to Petitioner then there are no substantial federal questions here. But this Petitioner has been wrongfully abused by a state Bar and a state court system. There must come a time when right is right and the truth finally prevails. There can be no deference to a state that would permit the type of unfair, underhanded and unconstitutional activities as used by Respondent in this case.

Petitioner and his family have waited for three years for the day to come when he would be vindicated. He has seen his family torn from their home and his children taken from their school and church and scouting troop and from their friends. This outrage has damaged these innocent children in a way that is truly tragic. Petitioner has lost his job and the career that it promised and numerous thousands of dollars in fees, costs and lost income. His reputation has been irreparably harmed.

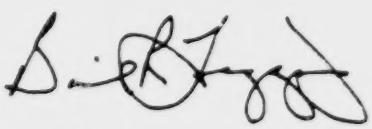
To this day there has never been a finding by any court or Bar that Petitioner ever acted unethically, immorally, illegally, untruthfully, fraudulently or negligently in any matter, as attorney, public servant or citizen. All Petitioner did was fail to carefully fill out his Bar application for which mistake he apologized to Respondent. He has never been convicted of a crime, never had a judgment against him and has never been found liable for malpractice or any other wrongful act. He is a member in good standing of the Bar of the State of West Virginia and the United States District Courts for both the Northern and Southern

Districts of West Virginia. He has served as a senior policy advisor to the Governor of North Carolina, Assistant Attorney General of the State of West Virginia, and currently serves as Director of Legal Services for the West Virginia Department of Education. This service is after he practiced as a sole practitioner in his home town and as a trust officer and management trainee at his hometown bank. All of his lifetime of good citizenship is now worth nothing if this Court will not hear this case.

Please find it in your grace to permit him to appear before you and argue his case. The questions submitted are substantial and relate directly to a state failing to follow the requirements of due process as set forth in the previous decisions of this Court.

WHEREFORE, Petitioner prays that this Court grant this Petition for a writ of Certiorari and reverse the Supreme Court of North Carolina in their ruling in the case of In re Legg 386 S.E. 2d 174 (N.C. 1989) and Order Respondents to grant Petitioner permission to sit for the February 1986 Bar Examination and if he recieved a passing score on said examination to grant him his license to practice law in the state of North Carolina with all the rights appertaining thereto and for his costs and any other relief the Court deems appropriate.

Respectfully submitted



Basil R. Legg, Jr
Pro se

IN THE SUPREME COURT OF NORTHCAROLINA

In the matter of: BASIL RAY LEGG, JR., Applicant to the February 1987 North Carolina Bar Examination	)	No.168A89 - Wake

On appeal as of right pursuant to Rule .1405 of the Rules Governing Admission to the Practice of Law in the State of North Carolina from an order of Brewer, J., entered 13 December 1988 in Superior Court, Wake County, which affirmed the 16 June 1988 order of the Board of Law Examiners denying the applicant's application for admission to the North Carolina Bar examination. heard in the Supreme Court 12 Octcber 1989.

Erdman, Boggs & Harkins, by Harry H. Harkins, Jr., for applicant-appellant.

Lacy H. Thornburg, Attorney General, by John F. Maddrey, Assistant Attorney General, for the Board of Law Examiners of the State of North Carolina-appellee.

MEYER, Justice.

The applicant contests the conclusion of the North Carolina Board of Law Examiners (Board) that he had "not satisdied the Board that he possesses the qualifications of character and general fitness requisite for an attorney and counsel or at law and that he is of such good moral character as to be entitled to the high regard and confidence of the public" and that "[f]or this reason, his application to take the North Carolina Bar Examination should be denied." After examination of the whole record, we affirm the Board's conclusion.

The Board made this conclusion after the Superior Court remanded an earlier Board order dated 30 July 1987. In the 30 July 1987 order the Board affirmed the order of a two-member hearing panel dated 17 April 1987 denying the application to stand for the North Carolina Bar Examination.

Basil Ray Legg, Jr., is an applicant for admission to the North Carolina Bar. He first applied to take the July 1986 North Carolina Bar Examination. However, he sent his application late, and the Board declined to grant his request to file a late application. The Board returned the application and registration fee at his request.

On 14 October 1986, the filing deadline for the February 1987 examination, Legg resubmitted the application he filed for the July 1986 examination. His updated application indicated that he had moved to North Carolina as of 1 October 1986, having purchased a home and taken employment in this state. On 1 December 1986 he filed an amendment providing zip codes and corrected addresses.

The Board permitted Legg to take the February 1987 examination but sealed the results pending a final determination of his fitness and character. At the time he submitted his application, Legg was a licensed attorney in West Virginia. Having graduated from the West Virginia University Law School in December 1983, he was admitted to practice in West Virginia pursuant to its diploma privilege, under which no bar examination is required.

By letter dated 24 March 1987, the Board notified the applicant that he was to appear before a hearing panel to answer questions as to his fitness and character. On 17 April 1987 Legg appeared before the two-member hearing panel. On that date, subsequent to the hearing, Legg submitted an amendment to his application listing the following debts: a $250.00 debt to West Virginia State Senator Odell Huffman; a $316.10 debt to Tom Moses, a private investigator; a $10,000 unsecured "disputed" debt to the estate of Mary Veneri; a $1,000 debt to MasterCard; and a $20,000 margin account secured by stocks and securities held by Merrill Lynch. He incurred the first three debts between mid-September and 1 November 1986 and the last two over "various"dates. None of these debts were listed on his original application although question 17(c) of the application requires applicants to "[l]ist all debts over $200, including student loans, and indicate [their] status." Question 17(d) requires the applicant to state whether "any one ever asserted a claim or demand against [the applicant], which has not been made the subject of any action or legal proceeding."

Legg also amended his answer to question 18, in which he had originally stated that he had never been involved personally in any suit. The April amendment disclosed an October 1985 suit to recover a debt in which Legg prevailed as the defendant. The amendment listed an additional malicious prosecution suit pending, with Legg and his wife the defendants. The amendment also

listed a dispute regarding the estate of Mary Veneri, his mother-in-law, in which suit would be filed. Neither of the suits or the dispute were listed on his original application, although question 18 asks "[h]ave you ever been involved in any suits in equity, actions at law, suits in bankruptcy or other statutory proceedings, matters in probate, lunacy, guardianship, or any other judicial proceedings of any nature and kind, except criminal proceedings, personally or as a member of a professional association or corporation?"

Finally, the amendment listed his membership since May 1985 in two professional organizations. His original application indicated no membership in any professional organization, although question 37(b) required applicants to "give the name and address of each organization whose membership consists primarily of attorneys and of which you are or have ever been a member."

By order dated 17 April 1987, the hearing panel concluded that Legg "has failed to satisfy the Hearing Panel that he possesses the qualifications of character and general fitness requisite for an attorney and counsellor-at-law and is of such good moral character as to be entitled to the high regard and confidence of the public." On that basis the panel denied Legg's application and ordered that his February 1987 North Carolina Bar Examination be permanently sealed. Pursuant to Board Rule .1203(b), Legg requested a hearing de novo before the full Board.

The Board mailed a notice of hearing to the applicant an

his attorney on 1 May 1987. The notice set out that specific inquiry would be made concerning three complaints filed with the West Virginia Bar against the applicant, pending litigation involving the applicant, and the applicant's representation of Linda B. White of Princeton, West Virginia. The notice also stated the "[w]hile the Board will make specific inquiry about the matters referred to above, please be advised that inquiry can be made about the answers to any questions set out in the application." The notice also directed the applicant to bring to this hearing any files, papers, statements of account, cancelled checks and any other documents he may have that relate to the matters of inquiry."

The hearing took place on 15 May 1987 before nine members of the eleven-member Board, including the two panel members who conducted the original hearing. On that day, prior to the hearing, Legg filed a third amendment to his application. This amendment described changes in his MasterCard and Merrill Lynch balances, a new automobile loan and the final satisfaction of a bank loan. The third amendment indicated for the first time a disputed $475.00 debt concerning a legal fee owed his nephew, Tony Veneri, which arose from a case in which the applicant and his nephew were co-counsel. The amendment also indicated for the first time a disputed amount owed to Richard Daisey, a court reporter. Like the previous two amendments, this third amendment was handwritten, though the form states that amendments slould be typewritten.

The Board initially questioned the applicant regarding omissions in his answers to question 6 of the application. That question requires applicants to "[l]ist . . . every permanent and temporary residence you have ever had . . . since your 16th birthday." The question also required applicants to give the exact address of each residence.

Legg admitted that his response to the question was incomplete and that it should have included his Louisiana restdence during the semester he withdrew from law school and lived with his fiancee. On his application Legg had listed the addresses of his residences during law school (September 1980 through December 1983) as "Various Apartments." He stated to the Board that he incompletely responded to the question because he was "unsure of the extent of the detail required on the application," that he just "assumed that this would be sufficient," that the omissions vere "an oversight on [his] part" and that he "did not take the necessary care in filling out this section."

Legg also neglected to list in his response to question 12 a month's employment as a laborer following his graduation from college. He left that position without giving notice because he found the work "too strenuous" and "[a]t the age of 18 or l9 [he] was not disciplined enough to handle those responsibilities."

The Board questioned Legg about those debts omitted from his answer to question 17 in his original application which were

the subject of his second amendment. Legg stated that his omission of those debts on the original application was "an oversight." Failure to include debts arising from his practice of law "was because [he] did not remember that part of the question when [he] updated and amended [his] application."

Legg "simply did not think of" the debt due Senator Huffman for the last month's rent on his law office when he submitted his application. Legg testified that he believed he had an understanding with the Senator in which Legg would return to retrieve some telephone equipment and pay the outstanding rent at that time since Huffman "never sent me a bill." After the two-member panel investigated the matter at the hearing, Legg sent the Senator a check in full payment. Legg introduced a letter from Senator Huffman in which Huffman indicated that on I May 1987 he had received the balance due on the office rental.

Legg stated that when he filed his October application he had no knowledge of his debt to Tom Moses, the private investigator. Under the West Virginia indigent defense system, the attorney is responsible for paying certain case-related expenses such as court reporting and private investigation. Legg's practice had been to pay for services prior to state reimbursement or, alternatively, after reimbursement. When Legg closed the approximately seventy active files for which he needed to bill the state prior to his move to North Carolina, he attached to his claim for reimbursement two separate invoices from Moses.

Legg testified that he did not pay Moses from the lump-sum reimbursement checks he received from West Virginia because the checks did not specify which cases they were for or whether they included monies for expenses incurred. He stated that because of pressing family matters, he did not have the time to appropriately keep track of funds owed Moses from two of these approximately seventy files. Legg deposited the reimbursements in his personal account. Because he did not have a "current bill" from Moses, there was nothing "in front of [him] to alert [him]" to the debt to Moses. Legg began paying Moses in installments only after Moses sent a follow-up bill. Legg did not volunteer the matrer of this or any other debt to the two-member hearing panel because he did not think that he could file additional amendments once he had taken the Bar examination.

Attached to the same claims for reimbursement as the Moses invoices were invoices for Tichenor Court Reporting Services. At the board hearing Legg was questioned for the first time about possible outstanding debts relating to these services. Legg testified that he had no occasion to look into his files to determine whether these particular bills remained unpaid. Because he had received no further billings from Tichenor, he was under the impression that he had paid for these services completely. Legg indicated that he did not feel the need to go back through his nearly three hundred files to see if any outstanding problems like those with Mr. Moses existed. Legg suggested that

if he owed money to Tichenor it might be the reporting service's fault for not having billed him promptly.

Legg testified that the alleged $10,000 debt to the Veneri estate arose after Legg privately approached Mrs. Veneri, his mother-in-law, for an unsecured loan to make a down payment on a North Carolina house. Mrs. Veneri had loaned him a similar amount some time earlier, which he had repaid. Unlike the earlier loan, there was no promissory note representing the latter indebtedness. Legg testified that Mrs. Veneri gave him a cashier's check for the amount of the loan in September 1986, immediately prior to her demise. She requested at the time she gave him the money that he not tell her sons about it because they would think she was showing favoritism towards her daughter, Legg's wife. When Mrs. Veneri died, Legg said he felt himself bound by his promise to his dead mother-in-law not to disclose the existence of the debt to his brother-in-law, Randall Veneri, the executor of the estate.

Upon discovery of the disbursement, the executor demanded that Legg and his wife sign a statement acknowledging an indebtedness of $10,000 to the estate to be treated as an advancement. The Leggs signed such a statement on 18 September 1986. Legg stated at the hearing that this matter did not cross his mind when he filed his application a month later. He disputed owing anything to the Veneri estate and failed to list this as a debt because the executor treated it as an advancement.

Legg recognized that though the $20,000 debt to Merrill Lynch was technically and legally a debt, he viewed it as a "bookkeeping tool" since it was fully secured with securities. The revolving consumer debt due MasterCard may not have been over $200.00 when he updated his application, but he acknowledged that it may have increased at the time of the two-member panel hearing. He listed the alleged debt to Tony Veneri because his counsel "helped [him] to see that [he] need[s] to look very broadly at what a possible debt could be." Legg explained his omissions as being due to the fact that he interpreted question 17(c) to include only installment debt. Although he "did not keep up with [his] updating of the applicaton as [he] should have," Legg stated he "was concerned with accuracy" when he filled out this portion of the application.

Legg opined that his troubles with the Board were the direct result of an effort by his wife's family to bring discredit upon him. This effort was occasioned by disputes arising over the settlement of the estate of his wife's mother.

Legg neglected to list a 1985 suit by his optometrist to recover a debt. Since he won the case, Legg indicated that he had no reason not to disclose the matter. Question 18 requires applicants to list all suits in which there was personal involvement. The question further requires applicants to furnish "copies of the litigation--bankruptcy, judgments, small claims, etc." The record on appeal does not contain such copies from the

1985 suit.

The Board next questioned Legg regarding his representation of Linda B. White during the course of his West Virginia practice. Legg's representation of Linda White concerned a suit for child support. After judgment in the case, Mrs. White wrote Legg a letter dated 10 June 1986 requesting that he return the contents of her file. He did so on 28 April 1987 following questioning about the matter during the two-member panel hearing. Legg explained that all the White papers were public records readily available at the courthouse in West Virginia and were not necessary for Mrs. White to prosecute her case further.

Legg next testified about three informal complaints filed with the West Virginia Bar which arose during the eighteen months Legg practiced law. West Virginia reviewers dismissed all three complaints. Legg dismissed as "meaningless dicta" which "disgusted" him a conclusion of law by the West Virginia investigator in one of those matters (the Long matter) that the client's "dissatisfaction with the rate at which Mr. Legg pursued the case alleges, at best, an isolated instance of neglect over which the Committee has no jurisdiction."

Legg offered into evidence seventeen additional certificates of his moral character. He testified that he had never been accused of a breach of trust. He pointed out that when he filed his application for the July 1986 Bar it was correct as to debts.

He admitted that he had been extremely careless in filling out his application to take the February 1987 Bar. He further explained the omissions as human error and lack of maturity. He tectified that he "must show more discipline in [his] professional matters" and stated that the first thing he would do if he ever started practicing law again would be to hire an experienced secretary. Legg was the only witness at his hearing.

By order dated 30 July 1987 the Board made findings of fact and concluded that the applicant did not possess the moral character requisite for licensure as an attorney of the North Carolina State Bar. Legg filed a petition for rehearing pursuant to Board Rule .l206. The Board denied the petition. Applicant filed exceptions to the Board's orders pursuant to Board Rule .1401 and appealed to the Superior Court of Wake County. By order dated 24 March 1988 Superior Court Judge D. Marsh McLelland remanded the case to the Board for further proceedings pursuant to Board Rule .1404.

On remand the Board relied on the record already before it. In its new findings of fact, the Board found that each of the applicant's answers to questions 6, l2, 17(c) and 18 "displayed a lack of fairness and candor in dealing with the Board." The Board specifically rejected the applicant's explanation that each and every failure to fully disclose information specifically required by the application was the result of inadvertence. The

Board found that "the Applicant purposefully failed to disclose numerous significant matters, and conclude[d] that the effect of these omissions was to mislead and deceive the Board." In making this finding the Board placed greatest weight on the failure to list: the debts to Huffman and Moses; the disputed debt to the Veneri estate; and the applicant's involvement as a defendant in the 1985 action to recover a debt.

The Board found further that the applicant demonstrated a "pattern of carelessness, neglect, and inattention to detail" while.engaged in the practice of law in West Virginia. The Board found that he was "presently morally unfit to practice law in the State of North Carolina because of his failure to settle all accounts left owing from his law practice, his willful conversion of funds owed to a private investigator . . . and his neglect to return legal papers to a client after a written request for such papers."

The Board again concluded that "[t]he Applicant has not satisified the Board that he possesses the qualifications of character and general fitness requisite for an attorney and counsellor at law and that he is of such good moral character as to be entitled to the high regard and confidence of the public." It again denied Legg's application by order dated l6 June 1988.

Legg filed exceptions to the Board's order and appealed to the Superior Court. Judge Coy E. Brewer, Jr., heard the matter at the 6 September 1988 Civil Non-jury Session of Superior

Court, Wake County, and, by order dated 13 December 1988, affirmed the order of the Board.

Applicant assigns as error the conclusion by the Board that he "has not satisfied the Board that he possesses the qualifications of character and general fitness requisite for an attorney and counsellor at law and that he is of such good moral character as to be entitled to the high regard and confidence of the public." More specifically, applicant assigns as error the findings of the Board that he willfully converted funds owed to Moses; that his application omissions were purposeul; that he attempted to conceal the Veneri loan; and that a pattern of carelessness, neglect and inattention to detail characterized his West Virginia practice. Additionally, applicant asserts that the Board denied him due process when it refused to permit him to present additional evidence after the hearing by denying his petition for rehearing. He also asserts the de novo board hearing did not comport with due process since the hearing included the two panel members who originally denied his application.

We address first the due process clams. Legg claims that the Board denied him due process when it refused his petition to rehear the case. Board Rule .1207 provides that an applicant may petition the Board to reopen or reconsider a case in order to present "newly discovered evidence which was not presented at the initial hearing because of some justifiable, excusable or unavoidable circumstances." Legg sought to admit a

letter from Mr. Moses stating tht the investigator had "nothing but positive comments for Mr. Legg." The notice Legg received from the Board stated that he would be questioned about his "indebtedness to Tom Moses of Princeton, West Virginia and why this was not reported on applicant's application." Applicant fails to explain why, given full and fair notice such as occurred here, this information could not have been presented to the Board at the time of the board hearing. Legg also sought reopening in order to introduce testimony from his wife concerning the Veneri loan. His basis for reopening the hearing was that the hearing began one and a half hour late and Mrs. Legg left the hearing without having testified, in order to pick up a child from day care. Again the notice of hearing specifically identified the Veneri loan as a matter of inquiry. While we do not know what Mrs. Legg's testimony would have been, plaintiff does not contend that its content was newly discovered evidence but rather agrues that its exclusion demonstrates arbitrariness in the Board's refusal to reopen the case. We find that the Board did not abuse its discretion in refusing the applicants petition for rehearing.

We find no violation of due process in the fact that the de novo board hearing included the two members of the original hearing included the two members of the original hearing panel. We note as an initial matter that the applicant made no motion at the board hearing seeking recusal of the two panel hearing members. Nor has the applicant made a showing of actual prejudice. This

situation is analogous to an en banc hearing before a federal appeals court after a case has been decided by a panel of the court's judges. There is no due process consideration when the same trial judge retries the same issues on remand after reversal of his decision by an appellate court. See FTC v. Cement Institute, 333 U.S. 683, 702-03, 92 L. Ed. 1010, 1035, reh'g denied, 334 U.S. 839, 92 L. Ed. 1764 (1948). The United States Supreme Court heard and rejected this theme in an analogous situation. Withrow v. Larkin, 421 U.S. 35, 43 L. Ed. 2d 712 (1975) (investigating members of state medical board may issue probable cause finding and later participate in contested hearing to determine whether to suspend a physician's license temporarily). We find no error in this administrative procedure.

We turn now to the Board's findings of fact and conclusion of law. This Court employs the whole record test when reviewing decisions of the Board of Law Examiners. Under this test, there must be substantial evidence that supports the Board's findings of fact and conclusions of law. Substantial evidence means that relevant evidence which a reasonable mind could accept as adequate to support a conclusion. In re Moore, 308 N.C. 771, 779, 303 S.E.2d 810, 815-16 (1983). "Under the 'whole record' test we must review all the evidence, that which supports as well as that which detracts from the Board's findings, and determine whether a reasonable mind, not necessarily our own, could reach the same conclusions and make the same

findings as did the Board." Id. at 779, 303 S.E.2d at 816. The initial burden of showing good character rests with the applicant. "If the Board relies on specific acts of misconduct to rebut this prima facie showing, and such acts are denied by the applicant, then the Board must establish the specific acts by the greater weight of the evidence." In re Elkins, 308 N.C. 317, 321, 302 S.E.2d 215, 217, cert. denied, 464 U.S. 995, 78 L. Ed. 2d 685 (1983).

There is uncontroverted evidence in the record before us to support the Board's finding that Legg willfully converted funds owed investigator Moses. "Conversion is "an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner's rights." Wall v. Colvard, Inc., 268 N.C. 43, 49, 149 S.E.2d 559, 564 (1966) (quoting Peed v. Burleson's, Inc., 244 N.C. 437, 439, 94 S.E.2d 351, 353 (1956)). The applicant intentionally deposited checks received from the State of West Virginia into his personal checking account and spent those funds for his personal account. These funds were paid in reimbursement for expenses incurred in the defense of Nest Virginia indigents. The evidence showed that Legg had an obligation to forward a portion of these funds to investigator Moses. Legg's conduct shows an unauthorized assumption of the right of ownership over monies to which another was entitled sufficient to support the Board's conclusion in the con-

text of a Board hearing.

Legg argues that he mistakenly spent the money owed to Moses under an erroreous belief that there were no bills outstanding. While the conversion did not necessarily rise to the level of a criminal offense or civil liability, such an evidentiary showing is not necessary in a Board proceeding to determine an applicant's moral fitness to practice law in North Carolina. See Campbell v. Board of Alcoholic Control, 263 N.C. 224, 225, 139 S.E.2d 197, 198-99 (1964), cited in In re Elkins, 308 N.C. at 323, 302 S.E.2d at 218.

Furthermore, Legg misinterprets the Board finding as requiring that attorneys deposit reimbursement checks in a client trust account. This is not the case. Rather, implicit in the Board finding is the underlying premise that Legg had a duty to ensure that debts associated with the reimbursement claims were paid in full before putting the reimbursement monies to his own use. This position is a reasonable one.

The evidence also supports the Board findings that the omissions from the application were more than inadvertent errors as the applicant cuggested during his hearing. Legg told the Board that to him "'debt' means a confirmed obligation to repay money." He admitted that in spite of this he did not reveal the $250.00 owed Huffman, the $316.10 owed Moses or the $10,000 claimed by the estate of Mary Veneri until after notification by the hearing panel of its interest in these matters.

Applicant asserts that without supporting evidence the Board may not reject his excuses of inadvertence to conclude that he was deceitful. The Board found that there was "a pattern of failing to disclose material matters specifically required to be disclosed" such that "the effect of these omissions was to mislead and deceive." (Emphasis added.) The basis of the Board's finding was the failure to list all addresses, places of employment, debts and actions in which Applicant had been a party. The Board placed the greatest weight on the applicant's failure to list his debts and the action to which he had been a party.

A material omission from a Bar application is "one that 'has the effect of inhibiting the efforts of the bar to determine an applicant's fitness to practice law.'" Attorney Grievance Commission in. Gilbert, 307 Md. 481, 492, 515 A.2d 454, 459 (1986) (quoting Matter of Howe, 257 N.W.2d 420, 422 (N.D. 1977)). Like misrepresentations, evasive responses and misleading statements, a purposeful pattern of failing to disclose material matters required to be disclosed can "obstruct full investigation into the moral character of a Bar applicant, [and is] inconsistent with the truthfulness and candor required of a practicing attorney." In re Willis, 288 N.C. 1, 18, 215 S.E.2d 771, 781, appeal denied, 423 U.S. 976, 46 L. Ed. 2d 300 (1975). See generally Annot., "Falsehood, Misrepresentations, Impersonations, and Other Irresponsible Conduct as Bearing on Requisite Good

Moral Character for Admission to Bar," 30 A.L.R. 4th 1020 23[b] (1984)

Personal indebtedness required to be disclosed on a Bar application is a material matter requiring full disclosure. Re Application of Lumpkin, 251 Ga. 64, 302 S.E.2d 679 (1983) (per curiam). Legg adnits he failed to make full disclosure. When the admitted omission of a prior legal action in which nonpayment of a debt was the central issue is added to Legg's admission of his failure to make full disclosure of his personal indebtedness, it is clear by the greater weight of the evidence that there was a pattern to Legg's omissions which would support a finding that the failure to disclose was purposeful. The Board could certainly conclude that the effect of these omissions was to mislead and deceive.

In his third assignment of error the applicant asserts that the Board erroneously found he attempted to conceal the existence of a $10,000 loan from the executor of the Veneri estate. Legg admitted that he did not tell the executor about the loan until confronted personally about it. He excused this behavior as being guided by a promise to his deceased mother-in-law. "It is well settled that the credibility of witnesses and the probative value of particular testimony are for the administrative body to determine . . . ." State ex rel. Utilities Commission v. Duke Power Co., 305 N.C. 1, 21, 287 S.E.2d 786, 798 (1982). The Board committed no error in making this finding.

Nor did the Board commit error when it found that Legg's practice of law in West Virginia "demonstrated a pattern of carelessness, neglect, and inattention to detail." The applicant does not challenge the underlying evidence which forms the basis of this finding. Instead, he would have us adopt his interpretation of the events surrounding his practice since the West Virginia State Bar never admonished him. The standards relevant to an admonishment by the West Virginia Bar do not determine whether applicant's practice is characterized by a pattern of carelessness and neglect. We hold that the greater weight of the evidence supports the Board finding that such a pattern existed.

As a result of these and other findings not excepted to, the Board concluded that the applicant lacked the moral character and fitness required for licensing. Applicant asserts that this conclusion was also erroneous.

Initially, the burden is on the applicant to prove his good moral character because "[f]acts relevant to the proof of his good moral character are largely within the knowledge of the applicant and are more accessible to him than to an investigative board." In re Willis, 288 N.C. at 15, 215 S.E.2d at 780. If evidence of an applicant's omissions becomes apparent, the Board should first determine if the applicant made the omissions purposefully. If the Board determines that the omissions were purposeful, the Board must then decide whether the omissions "so reflect on the applicant's character that they are sufficient to

rebut his prima facie showing of good character." In re Moore, 301 N.C. 634, 641, 272 S.E.2d 826, 831 (1981).

"[A state] has wide freedom to gauge on a case-by-case basis the fitness of an applicant to practice law." In re Griffiths, 413 U.S. 717, 725, 37 L. Ed. 2d 910, 917 (1973). The character requisite for an applicant to the Bar "is something more than an absence of bad character." In re Applicants for License, 191 N.C. 235, 238, 131 S.E. 661, 663 (1926). "Material false statements can be sufficient to show the applicant lacks the requisite character and general fitness for admission to the Bar." In re Elkins, 308 N.C. at 327, 302 S.E.2d at 221. "Good moral character has many attributes, but none are more important than honesty and candor." In re Green, 464 A.2d 881, 885 (Del. 1983) (per curiam). Where there is a purposeful pattern of omitted material information, the Board may conclude that the applicant has failed in his burden to exhibit candor in his application.

"[T]he prime obligation and responsibility of both the Board and this Court [are] to protect the public from incompetent and dishonest lawyers, and to assure that those admitted to the Bar possess the requisite attributes of good moral character, learning and ability." Id. "The purpose of withholding certifications is not to punish the candidate but to protect the public and preserve the integrity of the Courts." In re Jenkins, 94 N.J. 458, 470, 467 A.2d 1084, 1090 (1983). We would add that

fundamental attributes of good moral character include the maturity and professional discipline necessary to accept responsibility and perfect the actions required to represent a client properly.

Legg stated in his hearing that because of an unexpectedly early departure from West Virginia, he "did not have the tinge to appropriately Keep track of funds owed Mr. Moses." We note that despite his haste the applicant did have the time to fully bill the Public Service Corporation of West Virgina. Only after the Board made specific inquiry into this and other matters was the applicant forthcoming. But for the Board, it would seem that some debts the applicant paid would remain yet unpaid and Linda White would await yet the contents of her file. The applicant's practices did not inspire the confidence of the Board and would not be likely to inspire the confidence of the general public.

The record and application indicate that Legg exhibited at best an attitude of carelessness and inattention to detail in his practice and his application. Such work habits could prove permanently damaging to any client who might come to rely upon the applicant's professional expertise. Our review of the record reveals no evidence that the applicant accepts personal responsibility for any of the numerous oversights, mistakes and inaccuracies that litter his application and the history of his practice in West Virginia. An applicant who fails to exhibit

care in the submission of a document essential to his admission to the practice of his chosen career is unlikely to exhibit any greater degree of care during the course of client representation. In short, the record reveals that Legg fails to show the maturity and professional discipline that is a fundamental attribute of the good moral character required to practice law in this state.

The findings taken singly may not be sufficient to disqualify the applicant from the practice of law in North Carolina. See In re Rogers, 297 N.C. 48, 58, 253 S.E.2d 912, 918 (1979) ("whether a person is of good moral character is seldom subject to proof by reference to one or two incidents"). However, when the findings are viewed in the aggregate, they reveal a systemic pattern of carelessness, neglect, inattention to detail and lack of candor that permeates the applicant's character and could seriously undermine public confidence and the integrity of the courts. The Board committed no error by concluding that the applicant has failed to satisfy the Board that he possesses the qualifications of character and general fitness requisite for an attorney and counsellor at law and that he is of such good moral character as to be entitled to the high regard and confidence of the public.

AFFIRMED.

Entered this 7th day of December, 1989.

Justice WEBB dissenting.

I dissent. The Board of Law Examiners has denied the appellant the right to be admitted to the bar in this State. The Board based this decision on the following finding:

> Applicant has failed to satisfy the Board that he possesses the qualifications of character and general fitness requisite for an attorney and counselor at law and that he is of such good moral character as to be entitled to the high regard and confidence of the public.

This conclusion of the Board was based on the way the appellant answered certain questions on the application to take the bar examination in this state and on a finding as to how he practiced law in West Virginia. The appellant did not list on his application all his prior residences, two jobs at which he worked, a debt in the amount of $250.00 owed for rent on an office he had used in West Virginia, a debt in the amount of $316.00 to a private investigator in West Virginia, and a loan from the appellant's mother-in-law in the amount of $10,000.00. The appellant also failed to list an action which had been filed against him in a Magistrate's court in West Virginia, which action was dismissed. In addition he had represented a woman in West Virginia and obtained a judgment for her. She requested on 10 June 1986 that he deliver to her the legal papers in that action and he did not do so until 28 April 1987.

The appellant appeared before a panel of the Board on

17 April 1987 and the full Board on 15 May 1987. He explained that he had resubmitted the same application to take the February 1987 bar examination as he had submitted for the 1986 examination. In the process he had forgotten that debts of more than $200.00 had to be listed. For this reason he did not list the debts for rent or to the private investigator. When he closed his law office he billed the State of West Virginia for work he had done for indigent defendants, which included the bill for the private investigator's work. He received checks for this work after he had moved to North Carolina and the checks did not show that any part of them were for the private investigator. He deposited the checks to his account in this state and when it was called to his attention that he owed the private investigator he made arrangements to pay it. When it was called to his attention that he owed rent in West Virginia he paid this.

The applicant testified that he inadvertently left off his application his former residences and his places of employment. He testified he did not intend to deceive the Board. As to the $10,000.00 debt to his mother-in-law, the appellant testified that she lent this money to him and his wife to help them buy a home in North Carolina. His mother-in-law asked him not to tell her other children as they would feel she was favoring his wife. After the death of the mother-in-law, his wife's brother confronted him in regard to the loan and he admitted it. He and his wife had signed a paper which said the

loan would he treated by his wife as an advancement from her mother's estate and he did not consider it a debt.

On 30 July 1987 the Board entered an order denying the appellant the right to stand for the bar examination. On 24 March 1988 Judge D. Marsh McLelland remanded the case to the Board with instructions (1) to determine whether the failure of the applicant to make full disclosure concerning his places of residence, his prior employment, and his debts over $200.00 were purposeful omissions designed to mislead the Board, (2) to specify with particularity what facts it relied upon in reaching its conclusion that the applicant's answers to questions on the application displayed a lack of candor in dealing with the Board, (3) to specify with particularity how the Board reached the conclusion that in his West Virginia law practice the applicant demonstrated a pattern of carelessness, neglect and inattention to detail, and (4) to specify what facts it relied upon to support its conclusion that the applicant failed to satisfy the Board that he possesses such good moral character as to be entitled to the high regard and confidence of the public.

On remand the Board found that the applicant's failure to make full disclosure of his places of residence, prior employment and debts over $200.00 were not inadvertent but evidenced a lack of candor and fairness in dealing with the Board. The Board found that the appellant's answers to various questions on the application displayed a lack of candor and

fairness. In particular the Board held the failure to list his places of residence, his places of employment, his debts in excess of $200.00, and the magistrate's court action against him indicated a pattern of failing to disclose material matters. It held the applicant had offered no plausible explanation for his failure to fully disclose the matters requested of him and rejected his claim that his failure to list these matters was due to inadvertence. It found the effect of these omissions was to mislead and deceive the Board. The Board said that its finding that while the appellant was engaged in the practice of law in West Virginia he demonstrated a pattern of carelessness, neglect, and inattention to detail was supported by his failure to pay the debts for rent and to the private investigator, his failure to review his files to see if other debts were owed and his failure to return the file to the woman he had represented in an action for child support. The Board held that the applicant had not satisfied it that he possesses the qualifications of character and general fitness requisite to practice law in this state.

I believe the Board erred in its findings of fact and conclusions. It appears to me that if the appellant had included all the matters on his application which he omitted it would not have prevented him from taking the bar examination. The appellant must have known this and the only plausible reason for his failing to do so was inadvertence. He may not have understood the importance of furnishing this explanation but this

does not mean he consciously attempted to mislead the Board. I believe the testimony of the appellant was credible and there was no contrary evidence. The Board should have accepted it. See In re Rogers, 29 N.C. 48, 253 S.E.2d 912 (1979).

As to the finding that while he was practicing law in West Virginia he demonstrated a pattern of carelessness, neglect, and inattention to detail, the Board held this was based on the failure to pay the debt to the private investigator, his failure to pay his rent, his failure to review his files after his law practice was closed to see if any other payments were due, and his failure to deliver a file to a client for whom he had obtained a judgment. The failure to pay the rent and the failure to pay the private investigator were matters that occurred after the appellant's West Virginia law practice was closed. I do not believe they support any conclusion as to what he did while practicing law in West Virginia. There is no evidence as to anything that would have been revealed had the files been reviewed. I do not believe this supports any conclusions as to how the appellant practiced law in West Virginia. The evidence showed that the appellant represented 298 clients while practicing law in West Virginia. The finding by the Board against him is that he failed to deliver a file to one client. If we add to this his overlooking a bill to a private investigator until the matter was called to his attention, I hardly believe this establishes a pattern of carelessness,

neglect, and inattention to detail in his West Virginia law practice.

I vote to reverse the Board of Law Examiners.

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY NO. 87CVS10934

In the Matter of:

BASIL RAY LEGG, JR.)
) ORDER
Application to Stand the)
February 1987 North Carolina)
Bar Examination)

This matter came on to be heard at the September 6, 1988, Non-Jury Session of Wake County Civil Superior Court, the Honorable Coy E. Brewer, Jr., Judge Presiding. The matter is before the Court pursuant to Section .1404 of the Rules Governing Admission to the Practice of Law in the State of North Carolina on the applicant's appeal from an Order entered June 16, 1988, by the Board of Law Examiners of the State of North Carolina denying his application to stand the February 1987 North Carolina Bar Examination.

The Applicant appeared before the Court and was represented by Walter K. Burton and Harry H. Harkins, Jr. The Board was represented by Assistant Attorney General John F. Maddrey.

The Court, after hearing the arguments of counsel, took the matter under advisement. After a thorough review of the Record and

full consideration of the written briefs submitted by councel, the Court finds that the findings of fact set forth in the Board's Order of June 16, 1988, are supported by competent evidence contained in the Record.

The Court further finds that the conclusions of law set forth in the Board's Order of June 16, 1988, are supported by its findings of fact.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the decision of the Board of Law Examiners of the State of North Carolina set forth in the Board's Order of June 16, 1988 is AFFIRMED.

This the 13 day of December, 1988.

/S/

Coy E. Brewer, Jr.

Superior Court Judge

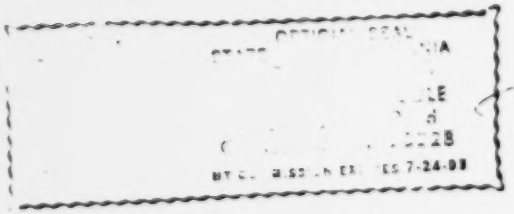
Certificate of Service

I, Basil R. Legg, Jr., do hereby certify that on the 7th day of March and again on the 4th day of April, 1990 I served a copy of the attached Petition for Writ of Certiorari upon counsel for Respondents by depositing a copy, postage prepaid in the United States Mail, to the following address:

John Maddrey, Esquire
Assistant Attorney General
North Carolina Board of Law Examiners
Fayetteville Street Mall
Raleigh, NC 27601

Basil R. Legg, Jr

Taken, sworn and subscribed before me this 4 day of April, 1990.



Notary Public

My commission expires: 7-24-95